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MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION



0000078531

Executive Director

DATE: NOVEMBER 9, 2007

DOCKET NO: T-04312A-05-0295

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

VALUTEL COMMUNICATIONS, INC.
(CC&N RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

NOVEMBER 19, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 27, 2007 and NOVEMBER 28, 2007

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR


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2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 MIKE GLEASON - Chairman
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 KRISTIN K. MAYES
8 GARY PIERCE

9 IN THE MATTER OF THE APPLICATION OF
10 VALUTEL COMMUNICATIONS, INC., FOR
11 APPROVAL OF A CERTIFICATE OF
12 CONVENIENCE AND NECESSITY TO PROVIDE
13 RESOLD LOCAL EXCHANGE AND RESOLD
14 LONG DISTANCE TELECOMMUNICATIONS
15 SERVICES IN ARIZONA.

DOCKET NO. T-04312A-05-0295

DECISION NO. _____

ORDER

13 Open Meeting
14 November 27 and 28, 2007
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

17 Having considered the entire record herein and being fully advised in the premises, the
18 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. On April 18, 2005, ValuTel Communications, Inc. ("ValuTel" or "Applicant") filed
21 with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to
22 provide resold local exchange telecommunications services and resold long distance
23 telecommunications services, in Arizona.

24 2. Notice of the application was given in accordance with the law.

25 3. On April 27, 2005, Staff filed its first set of Data Requests.

26 4. On May 2, 2006, by Procedural Order, Staff was directed to make a filing updating the
27 Commission on the status of this matter and to indicate whether the matter should be administratively
28 closed.

1 5. On May 30, 2006, Staff filed a Request for an Extension of Time to submit updated
2 information regarding the Applicant's application.

3 6. On June 1, 2006, by Procedural Order, Staff's request for an extension of time was
4 granted and Staff was directed to file its update by July 17, 2006.

5 7. On July 17, 2006, Staff filed its update recommending that this matter not be
6 administratively closed.

7 8. On December 12, 2006, Staff filed its Second Set of Data Requests.

8 9. On February 6, 2007, Applicant filed responses to Staff's data requests.

9 10. On June 15, 2007, Applicant filed supplemental information in support of its
10 application.

11 11. On August 2, 2007, Staff filed its Staff Report recommending approval of the
12 Applicant's application subject to certain conditions.

13 12. On September 21, 2007, the Hearing Division initiated a telephonic conference to
14 discuss several issues raised in Staff's Report.

15 13. On September 26, 2007, by Procedural Order, Staff was directed to file a
16 Supplemental Staff Report clarifying one of its recommendations.

17 14. On October 1, 2007, Staff filed its Supplemental Staff Report continuing to
18 recommend approval of ValuTel's application subject to conditions and clarifying one of its
19 recommendations.

20 15. ValuTel is a foreign corporation authorized to transact business in Arizona.

21 16. ValuTel is in good standing with the Arizona Corporation Commission.

22 17. Applicant is a switchless reseller that purchases telecommunications services from a
23 variety of carriers for resale to its customers.

24 18. In Decision No. 58926 (December 22, 1994), the Commission found that resold
25 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
26 of the Commission.

27 19. ValuTel provides telecommunications services in New Mexico and is certified to
28 provide telecommunications services in Texas.

1 20. ValuTel possesses the technical capabilities to provide the services it is requesting in
2 this application.

3 21. ValuTel provided unaudited financial statements showing assets of \$270,172.87;
4 equity of \$120,624.41; and a net income of negative \$3,887.04, for the year ending December 31,
5 2006.

6 22. Staff recommends approval of ValuTel's application for a CC&N to provide intrastate
7 telecommunications services subject to the following conditions:

- 8
- 9 (a) That ValuTel comply with all Commission Rules, Orders and other
10 requirements relevant to the provision of the intrastate telecommunications
11 services;
- 12 (b) That ValuTel abide by the quality of service standards that were approved by
13 the Commission for Qwest in Docket No. T-01051B-93-0183;
- 14 (c) That ValuTel be prohibited from barring access to alternative local exchange
15 service providers who wish to serve areas where ValuTel is the only provider
16 of the local exchange service facilities;
- 17 (d) That ValuTel be required to notify the Commission immediately upon changes
18 to its name, address or telephone number;
- 19 (e) That ValuTel cooperate with Commission investigations including, but not
20 limited to customer complaints;
- 21 (f) That although Staff considered the fair value rate base information submitted
22 by ValuTel, the fair value information provided should not given substantial
23 weight in this analysis;
- 24 (g) That if ValuTel desires to collect advances, deposits and/or prepayments from
25 its customers in the future, ValuTel should be required to file an application
26 with the Commission for approval and such application should reference any
27 Decision in this docket;
- 28 (h) That ValuTel offer Caller ID with the capability to toggle between blocking
and unblocking the transmission of the telephone number at no charge;
- (i) That ValuTel offer Last Call Return service that will not return calls to
telephone numbers that have the privacy indicator activated; and
- (j) That ValuTel receive authorization to discount its rates and service charges to
the marginal cost of providing the services.

1 23. Staff further recommends that ValuTel be ordered to comply with the following
2 conditions and if it fails to do so, ValuTel's CC&N should be considered null and void after due
3 process.

4 a. That ValuTel docket conforming tariffs for each service within its CC&N within 365
5 days of a Decision in this matter or 30 days prior to the provision of service, whichever comes
6 first. The tariffs submitted by ValuTel should coincide with the application in this matter and
7 state that ValuTel does not collect advances, deposits and/or prepayments from its customers.

8 b. That ValuTel:

9 1). Procure a performance bond or irrevocable sight draft letter of credit in the
10 amount of \$25,000. The minimum performance bond or irrevocable sight draft letter
11 of credit amount of \$25,000 should be increased if at any time it would be insufficient
12 to cover advances, deposits and/or prepayments collected from ValuTel's customers.
13 The performance bond or irrevocable sight draft letter of credit should be increased in
14 increments of \$12,500, and the increase should occur when the total amount of the
15 advances, deposits and/or prepayments is within \$2,500 of the performance bond or
16 irrevocable sight draft letter of credit amount.

17 2). Docket proof of the performance bond or irrevocable sight draft letter of credit
18 within 365 days of the effective date of an Order in this matter or 30 days prior to the
19 provision of service, whichever comes first. The performance bond or irrevocable
20 sight draft letter of credit should remain in effect until further Order of the
21 Commission.

22 24. On October 15, 2007, ValuTel filed a Response to Staff's Supplemental Staff Report
23 objecting to Staff's recommendation of a \$25,000 bond amount as too excessive.

24 25. Although ValuTel's tariff states it will not collect advances, deposits, and/or
25 prepayments from its customers, it is requesting authority to provide local exchange services.

26 26. Local exchange customers pay their monthly service charges in advance and therefore,
27 the Commission requires that all local exchange carriers procure a performance bond or irrevocable
28 sight draft letter of credit, including reseller local exchange carriers, procure a minimum \$25,000

1 performance bond or irrevocable sight draft letter of credit to protect customers. Therefore, ValuTel
2 should be required to procure a \$25,000 performance bond or irrevocable sight draft letter of credit to
3 protect its resold local exchange customers.

4 27. ValuTel will be providing service in areas where it will have to compete with other
5 incumbent local exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs") and
6 interexchange carriers providing telephone service.

7 28. ValuTel will not be able to exert any market power in the areas it is requesting to serve
8 and the competitive process will result in rates that are just and reasonable.

9 29. ValuTel's proposed rates are for competitive services. In general, rates for
10 competitive services are not set according to the rate of return regulation.

11 30. ValuTel's fair value rate base ("FVRB") is zero.

12 31. Staff reviewed the rates to be charged by ValuTel and determined they are just and
13 reasonable as they are comparable to other CLECs and ILECs operating in Arizona.

14 32. ValuTel has requested that its telecommunication services in Arizona be classified as
15 competitive.

16 33. Staff recommends that ValuTel's proposed resold local exchange and resold
17 interexchange telecommunications services be classified as competitive because ValuTel will have to
18 compete with new CLECs; ILECs hold a virtual monopoly in the local exchange market; there are
19 alternatives to ValuTel's services; ValuTel will have to convince customers to purchase its services;
20 and ValuTel will therefore have no market power in those local exchange or interexchange service
21 markets where alternative providers to telecommunication services exist.

22 34. ValuTel has not had an application for service denied or revoked in any state, and
23 there have been no formal complaint proceedings and no civil or criminal proceedings involving
24 ValuTel.

25 35. Applicant indicated that none of its officers, directors or partners have been involved
26 in any civil or criminal investigations, formal or informal complaints. Additionally, Applicant
27 indicated that none of its officers, directors or partners have been convicted of any criminal acts in
28 the past ten years.

36. The Consumer Services Division showed no complaints filed against ValuTel in Arizona.

37. Staff's recommendations, as set forth herein are reasonable and should be adopted, and should include that ValuTel should be required to file the original performance bond or irrevocable sight draft letter of credit, in a form acceptable to Staff, with the Commission's Business Office and copies of the performance bond or irrevocable sight draft letter of credit with Docket Control, as a compliance item in this docket, within 30 days of a Decision in this matter.

38. The rates proposed by this filing are for competitive services.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. This matter may be heard without a hearing pursuant to A.R.S. § 40-282.

3. A.R.S. §§ 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

4. The Commission has jurisdiction over Applicant and the subject matter of the application.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

6. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

7. ValuTel is a fit and proper entity to receive a CC&N to provide resold local exchange, and resold long distance services in Arizona, subject to Staff's recommendations and conditions set forth herein.

ORDER

IT IS THEREFORE ORDERED that the application of ValuTel Communications, Inc., for a Certificate of Convenience and Necessity for authority to provide competitive resold local exchange and resold long distance telecommunications services in Arizona, is hereby granted, subject to compliance with Staff's conditions set forth in Finding of Fact No. 22 and 23 and as modified in Finding of Fact No. 37 and in the following Ordering Paragraphs.

IT IS FURTHER ORDERED that ValuTel Communications, Inc., shall procure a performance bond or irrevocable sight draft letter of credit equal to \$25,000, which shall remain in effect until further Order of the Commission.

IT IS FURTHER ORDERED that ValuTel Communications, Inc., shall file the original performance bond or original irrevocable sight draft letter of credit, in a form acceptable to Staff, with the Commission's Business Office and copies of the performance bond or irrevocable sight draft letter of credit with Docket Control, as a compliance item in this docket, within 30 days of the effective date of this Decision.

IT IS FURTHER ORDERED that if ValuTel Communications, Inc. begins to charge advances or prepayments or deposits for its resold local exchange service it shall increase the minimum performance bond or irrevocable sight draft letter of credit amount of \$25,000 if at any time it would be insufficient to cover advances, deposits and/or prepayments collected from ValuTel Communication's Inc., customers. The performance bond or irrevocable sight draft letter of credit should be increased in increments of \$12,500, and the increase should occur with the total amount of the advances, deposits and/or prepayments is within \$2,500 of the performance bond or irrevocable sight draft letter of credit amount.

IT IS FURTHER ORDERED that ValuTel Communications, Inc., shall docket conforming tariffs for each service granted herein within 365 days of this Decision or 30 days prior to the provision of service, whichever comes first. The docketed tariffs shall coincide with the application filed in this matter and shall state that ValuTel Communications, Inc., does not collect advances, deposits and or/or prepayments from its customers.

1 IT IS FURTHER ORDERED that if ValuTel Communications, Inc., fails to meet the
 2 timeframes set forth herein, the Certificate of Convenience and Necessity conditionally granted
 3 herein shall become null and void, after due process.

4 IT IS FURTHER ORDERED that if ValuTel Communications, Inc., desires to collect
 5 advances, deposits and/or prepayments from its resold long distance customers in the future, ValuTel
 6 Communications, Inc., shall file an application with the Commission for approval and such
 7 application shall reference the Decision in this matter.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10
 11
 12 CHAIRMAN

COMMISSIONER

13
 14 COMMISSIONER

COMMISSIONER

COMMISSIONER

15 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
 16 Executive Director of the Arizona Corporation Commission,
 17 have hereunto set my hand and caused the official seal of the
 18 Commission to be affixed at the Capitol, in the City of Phoenix,
 19 this ____ day of _____, 2007.

20 DEAN S. MILLER
 21 INTERIM EXECUTIVE DIRECTOR

22 DISSENT _____

23
 24 DISSENT _____

25 YBK:db

1 SERVICE LIST FOR: VALUTEL COMMUNICATIONS, INC.

2 DOCKET NO.: T-04312A-05-0295

3

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